

FMLA FREQUENTLY ASKED QUESTIONS

Q: How much leave am I entitled to under FMLA?

If you are an "eligible" employee, you are entitled to 12 weeks of FMLA in a 12-month period unless it is to care for a service member which is 26 weeks.

Note: This is not based upon scheduled hours but actual hours worked.

Q: How is the 12-month period calculated under FMLA?

Employers may select one of four options. Douglas County uses the date an employee's first FMLA leave begins.

Example: Employee needs to have surgery on 6/12/15. The employee's FMLA 12-month period begins 6/12 and runs through 6/11/16. Any other FMLA this employee needs would be considered part of this 12-month time frame.

Note: If an employee does not have an intermittent FMLA that is ongoing, the start date for the 12-month period could change.

Q: Is FMLA paid leave?

No, FMLA is an unpaid leave of absence. However, the FMLA regulations permit an employee to elect, or the employer to require the employee, to use accrued paid leave (sick or vacation leave, floating holidays or comptime) for some or all of the FMLA leave period. When paid leave is substituted for unpaid FMLA leave, it is counted against the employee's 12-week FMLA leave entitlement as long as the employee is properly notified on the FMLA Designation form.

Q: Does workers' compensation leave count against my FMLA leave?

Douglas County requires FMLA and worker's compensation to run concurrently. The County will notify the employee in writing that the workers compensation leave will be counted as FMLA.

Q: Can the County count leave taken due to pregnancy complications against the 12 weeks of FMLA leave for the birth and care of my child?

Yes, if you have to use some of your FMLA for another reason, including a difficult pregnancy, time taken will be deducted from your 12-weeks of FMLA as long as you receive a Designation Notice.

Q: Can the County count time on maternity leave or pregnancy disability leave as FMLA leave?

Yes. Pregnancy disability leave or maternity leave for the birth of a child is considered a qualifying FMLA event for a serious health condition and may be counted in the 12 weeks of leave so long as the County provides a Designation Notice to you.

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Q: If the County fails to tell employees that the leave is FMLA leave, can it count the time I've already been off against my 12 weeks of FMLA?

In most situations, the County cannot count leave as FMLA retroactively. Remember, you will receive a Designation Notice when FMLA will be used. However, if the County is not aware of the reason for the leave, it may be designated as FMLA retroactively only while the leave is in progress or within two (2) business days of your return to work.

Q: Can the County designate an absence as FMLA?

If the County has enough information to determine that the absence is FMLA qualifying, it can designate the absence as FMLA. The employee would receive a Designation Notice indicating FMLA is in progress.

Q: Who is considered an immediate "family member" for purposes of FMLA?

An employee's spouse, children (son or daughter), and parents are immediate family members. The term "parent" does not include a "parent in-law." The term son or daughter does not include individuals age 18 or over unless they are "incapable of self-care" because of a mental or physical disability that limits one or more of the "major life activities" as defined under the Americans with Disabilities Act (ADA).

Q: May I take FMLA for visits to a therapist, if therapy is prescribed by my healthcare provider?

Yes. You can take leave for "continuing treatment by a healthcare provider," which can include recurring absences for therapy treatments such as physical therapy after a hospital stay or for treatment of severe arthritis for example.

Q: Which employees are eligible to take FMLA leave?

Employees are eligible for FMLA if they have worked for the County at least 12 months and have worked for at least 1,250 hours over the previous 12 months.

Q: Do the 12 months of service have to be continuous or consecutive?

No. All time worked for the County in the prior 7 years counts towards the 12 months of service.

Q: Do the 1,250 hours include paid leave time or other absences from work?

No. The 1,250 hours includes only those hours actually/physically worked. Paid leave (sick, vacation, holiday, etc.) and unpaid leave (including FMLA) do not count towards the 1,250 hours.

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Q: How do I determine if I have worked 1,250 hours in a 12-month period?

Your payroll records are used to determine whether 1,250 hours has been worked in the prior 12 months prior to the commencement of FMLA.

Example: You worked 24 hours a week in the proceeding 52 weeks which is 1,248 hours worked. In this case, you would not be eligible for FMLA.

Q: How much advance notice do I have to give the County if I need FMLA?

You are required to give 30 days' advance notice if the absence is foreseen. If it is not foreseen, then you must provide notice as soon as practicable.

Q: Do I have to give the County my medical records for leave due to a serious health condition?

No. You do not have to provide medical records. However, you will need to provide a completed medical certification form completed by your healthcare provider confirming a serious health condition exists. This form should be submitted directly to Human Resources by your healthcare provider, you, or a family member.

Q: Can I be required to return to work before I exhaust my leave?

Subject to certain limitations, the County may deny the continuation of FMLA leave due to a serious health condition if you fail to provide supporting medical certification. The County cannot require you to return to work early by offering you a light duty assignment unless your FMLA is for workers compensation.

Q: Are there any restrictions on how I spend my time while on leave?

The County can establish policies regarding outside employment while on paid or unpaid leave and apply those policies to employees on FMLA. The protections of FMLA will not cover situations where the reason for leave no longer exists, where the employee has not provided required notices or certifications, or where the employee has misrepresented the reason for leave.

Example: An employee cannot take FMLA for their serious health condition because they were denied vacation. Doing so, may result in discipline, up to an including termination.

Q: Can the County make inquiries about my leave during my absence?

Yes, but only to you. The County may ask questions of you to confirm whether the leave needed or taken qualifies for FMLA and may require periodic reports on your status and intent to return to work after leave. Also, the County may obtain second opinion or require additional medical certification at its expense or require recertification during a period of FMLA. Human Resources may contact your healthcare provider to clarify information on the medical certification or to confirm it was provided by the healthcare provider. This inquiry may **not seek additional information** regarding

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your health condition or that of a family member unless you have signed a HIPAA release form.

Q: Can the County refuse to grant me FMLA leave?

If you are an "eligible" employee who has met FMLA's notice and medical certification requirements (and you have not exhausted your FMLA leave entitlement for the year), you may **not** be denied FMLA leave.

Q: Will I lose my job if I take FMLA leave?

Generally no, it is unlawful for any employer to interfere with or restrain or deny the exercise of any right provided under the Family and Medical Leave Act. Employers cannot use the taking of FMLA leave as a negative factor in employment actions, such as hiring, promotions or disciplinary actions; nor can FMLA leave be counted under "no fault" attendance policies.

Q: Are there other circumstances where I could be denied FMLA leave or reinstatement to my job?

The County is not required to continue FMLA benefits or reinstate employees who would have been laid off nor otherwise had their employment terminated had they continued to work during FMLA. Employees who are unable to return to work and have exhausted their 12 weeks of FMLA in the designated "12-month period" no longer have FMLA protections of leave or job restoration. Under certain circumstances, the County may require employees experiencing a serious health condition to provide a medical certificate of fitness for duty in order to return to work. If the employee fails to provide the certification the County may be denied reinstatement or delay reinstatement until the certification is submitted.

Q: Can the County fire me for complaining about an unlawful violation of FMLA?

No, nor can the County take any other adverse employment action on this basis. It is unlawful for any employer to discharge or otherwise discriminate against an employee for opposing a practice made unlawful under FMLA.